

Disciplinary and Other NASD Actions

REPORTED FOR SEPTEMBER

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of August 2003.

Firms Expelled, Individuals Sanctioned

Liss Financial Services (CRD #21950, Milwaukee, Wisconsin) and Jerome Edward Liss (CRD #310709, Registered Representative, Belgium, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was expelled from NASD membership and Liss was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with the offer and sale of a security, they engaged in a series of transactions with the issuer and with affiliates of the issuer that operated as a scheme to evade the registration provisions of the Securities Act of 1933. NASD found that the firm and Liss served as statutory underwriters for the issuer in violation of Section 5 of the Securities Act of 1933 by acquiring unregistered shares from the issuer and from control affiliates of the issuer by means of a gypsy swap transaction, distributing those shares to the public without registration or valid exemption, and returning the proceeds of the distribution to the issuer. The findings also stated that the firm and Liss effected transactions for customer accounts in the securities of a penny stock without providing customers with the disclosure required under Section 15g of the Exchange Act and Rules 15g-2 and 15g-3 thereunder. Specifically, NASD found that the respondents failed to furnish customers with risk disclosure documents relating to the penny stock market before effecting customer transactions; failed to obtain from customers a manually signed and dated written statement acknowledging receipt of the risk disclosure document before effecting customer transactions in the company securities; and failed to disclose to customers and to confirm in writing the bid and ask price of the stock before effecting customer transactions in the stock. In addition, NASD found that the firm and Liss failed to respond to NASD requests for documents and information. Furthermore, NASD determined that the firm failed to reasonably supervise the activities of employees, and failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to achieve compliance with securities laws, regulations, and NASD rules. **(NASD Case #CMS030167)**

SFI Investments, Inc. (CRD #21663, New York, New York) and Frank Joseph Fasano (CRD #1003292, Registered Principal, Summit, New Jersey). The firm was expelled from NASD membership and Fasano was barred from association with any NASD member in any capacity. In light of the expulsion and bar, as well as the financial status of Fasano, no monetary sanctions were imposed. The sanctions were based on findings that the firm, acting through traders and with Fasano's acquiescence and approval, improperly used public customer accounts as the firm's

de facto accounts for proprietary trading in municipal securities in violation of its restriction agreement with NASD. The findings also stated that the firm, acting through Fasano, engaged in a securities business while failing to maintain the net capital required by the Securities and Exchange Commission (SEC). NASD also found that the firm and Fasano allowed individuals to function as general securities representatives without having registered with NASD and failed to exercise reasonable supervision over them. In addition, NASD found that the firm failed to respond to NASD requests for information in a timely manner. (NASD Case #C10970176)

Firms Fined, Individuals Sanctioned

Banyan Capital Markets, LLC (CRD #45763, Boca Raton, Florida) and Barry Fredric Goldberg (CRD #3096483, Registered Principal, Boca Raton, Florida) were fined \$10,000, jointly and severally. The firm was also censured and Goldberg was fined \$20,000, individually, and suspended from association with any NASD member in any capacity for 45 days. The fines must be paid before Goldberg reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, the firm and Goldberg consented to the described sanctions and to the entry of findings that the firm and Banyan produced a research report evaluating a public company that was unbalanced, unwarranted, and contained omissions of material fact concerning the company. The findings also stated that the report failed to disclose that the company might be required to issue securities to satisfy current debt, thereby diluting previously issued stock. NASD also found that the firm, through Goldberg, failed to supervise adequately the work of a registered representative in preparing the report. In addition, NASD found that the report failed to disclose in the written agreement that the firm would be compensated by the company for the services of the representative, and that the compensation was to be received by the firm.

Goldberg's suspension began July 16, 2003, and concluded at the close of business August 29, 2003. (NASD Case CAF030035)

Blackwood Securities, LLC (CRD #44669, New York, New York) and Craig Robert Schlifstein (CRD #2637134, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$105,000, \$20,000 of which is joint and several with Schlifstein. Schlifstein was suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Schlifstein, failed to submit required information to the Order Audit Trail SystemSM (OATSSM) on 506 consecutive business days, and submitted to OATS reports with respect to equity securities traded on The

Nasdaq Stock Market that were not in the electronic form prescribed by NASD. The findings stated that the reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web Site, but the firm did not correct or replace any of the subject reports.

NASD also found that the firm, acting through Schlifstein, transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data, executed a short-sale transaction in a Nasdaq National Market[®] (NNM[®]) security at or below the current inside bid when the current inside bid was below the preceding inside bid in the security, and executed short-sale orders and failed to make an affirmative determination prior to executing such transactions. Furthermore, the firm, acting through Schlifstein, failed to respond timely and/or completely to NASD requests for information. In addition, the findings stated that the firm, acting through Schlifstein, failed to keep current and amend Schlifstein's application for registration, and the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning the bid test rule, the affirmative determination rule, and the OATS reporting rules.

Schlifstein's suspension began August 18, 2003, and concluded at the close of business August 29, 2003. (NASD Case #CMS030168)

Institutional Equity Corporation f/k/a Redstone Securities, Inc. (CRD #19628, Dallas, Texas) and Robert Alton Shuey, III (CRD #710362, Registered Principal, Dallas, Texas) were fined \$20,000, jointly and severally, and Shuey was suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that the firm, acting through Shuey, failed to deposit funds of best efforts minimum-maximum offerings in bona fide escrow accounts, as represented in the offering memoranda. The findings also stated that the firm, acting through Shuey, utilized the instrumentalities of interstate commerce to engage in a securities business while failing to maintain its required minimum net capital and filed FOCUS reports that inaccurately stated the firm's net capital. In addition, the findings stated that the firm, acting through Shuey, failed to prepare and maintain accurate books and records.

Shuey's suspension began July 21, 2003, and will conclude at the close of business July 20, 2004. (NASD Case #C06020018)

Phillip Louis Trading, Incorporated (CRD #19378, Red Bank, New Jersey) and Johnny Philip Figliolini, Jr. (CRD #1058617, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$44,000, including disgorgement of \$14,036.31 in commissions received. Figliolini was fined \$10,000, suspended from association with any NASD member in any capacity for 10 business days, and ordered to requalify by exam for the Series 24 license before acting again in a principal

capacity. Without admitting or denying the allegations, the firm and Figliolini consented to the described sanctions and to the entry of findings that an agent of the firm effected the sale of unregistered shares of stock to market makers while the firm engaged in the distribution of the stock to market makers and acted as an underwriter as defined in Section 2(11) of the Securities Act of 1933. The findings also stated that the firm allowed individuals to exercise discretion in the accounts of public customers without receiving prior written authorization from the customers, and that the firm did not accept the accounts in writing as discretionary. NASD found that Figliolini failed to supervise the activities of an individual in the sale of unregistered securities and failed to respond to red flags and inquire as to the source of the stocks and the relationships between account holders. In addition, NASD found that the firm failed to institute a supervisory system and establish and maintain written supervisory procedures reasonably designed to achieve compliance with federal securities laws, regulations, and NASD rules regarding restricted securities.

Figliolini's suspension began August 18, 2003, and concluded at the close of business August 29, 2003. (NASD Case #CAF030036)

Firm and Individual Fined

Tripp & Company, Inc. (CRD #6967, New York, New York) and Kevin Michael John O'Connor (CRD #1096256, Registered Principal, Port Chester, New York) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$12,500, jointly and severally. Without admitting or denying the allegations, the firm and O'Connor consented to the described sanctions and to the entry of findings that the firm, acting through Tripp, operated without a registered financial and operations principal. The findings also stated that the firm, acting through O'Connor, failed to maintain accurate books and records. (NASD Case #C10030062)

Firms Fined

Automated Trading Desk Brokerage Services, LLC (CRD #36000, Mt. Pleasant, South Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale transactions in NNM securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. In addition, NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the reporting of short-sale transactions to NASD. (NASD Case #CMS030162)

Clayton, Williams & Sherwood Investments (CRD #23551, Newport Beach, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted registered persons to act in capacities requiring registration while their NASD registrations were inactive due to failure to complete in a timely manner the Regulatory Element of the Continuing Education Requirement. (NASD Case #C02030043)

Investment Placement Group (CRD #14458, La Jolla, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected transactions in stock option contracts that resulted in the firm's customers holding or controlling an aggregate equity options position that exceeded the applicable options position limits. The findings also stated that the firm did not follow the procedures set forth in its written supervisory procedures that direct a designated supervisor to identify positions that exceed allowable option position limits under the rules of self-regulatory organizations, and thus failed to establish, maintain, and enforce a supervisory system that was reasonably designed to achieve compliance with NASD Rule 2860(b)(3). (NASD Case #CMS030164)

Seaboard Securities, Inc. (BD #755, Florham Park, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$12,500, and required, within 30 days of acceptance of this AWC, to retain at its sole expense, an independent outside consultant not unacceptable to NASD to conduct a review of and prepare a written report and make recommendations as to the adequacy of the firm's supervisory and compliance policies and procedures and its system for applying such procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to entry of findings that it failed to timely amend certain Forms U4 and U5 of registered representatives of a branch office after becoming aware of information triggering an obligation to amend these Forms, such as the filing of reportable customer complaints and arbitration claims. NASD also found that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to ensure that Forms U4 and U5 were promptly amended upon receipt of information triggering an obligation to amend. (NASD Case #C9B030049)

Tanager Capital Group LLC (BD #111972, Maplewood, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it conducted securities and investment banking activities prior to

the approval of the firm's membership with NASD. (NASD Case #C9B030048)

United Securities Alliance, Inc. (BD #36487, Greenwood Village, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$111,425. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that registered persons failed to take the Regulatory Element of Continuing Education within their respective windows and subsequently became inactive; and, while inactive, the firm allowed them to engage in activities that required registration, and they generated and were paid transaction-based compensation. NASD found that the firm allowed registered persons not to participate in the firm Element of Continuing Education. The findings also stated that the firm failed to report, or was delinquent in reporting, occurrences that required reporting under Rule 3070 and failed to conduct annual inspections of offices of supervisory jurisdiction. In addition, NASD determined that the firm failed to register off-site locations such as branch offices with NASD, and that the firm could only provide evidence that 157 of the firm's 1,130 registered persons attended an annual compliance meeting in 2000. The findings also stated that the firm failed to perform the requisite background check on 17 new hires, and, in addition, failed to obtain the Form U5 from the previous employer of five of the new hires. NASD also found that the firm failed to promptly notify NASD of branch office address changes and that the firm's written supervisory procedures and supervisory system were inadequate. (NASD Case #C3A030032)

vFinance Investments, Inc. (CRD #44962, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale transactions in a NNM security and failed to report each of these transactions to the Automated Confirmation Transaction Service (ACTSM) with a short-sale modifier. The findings stated that the firm executed short-sale orders in NNM securities and failed to make an affirmative determination prior to executing such transactions. NASD also found that the firm executed short-sale transactions in NNM securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. In addition, NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning short sales. (NASD Case #CMS030177)

Individuals Barred or Suspended

Fulvio Antonio Acosta, Jr. (CRD #2857206, Registered Representative, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was

fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Acosta reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Acosta consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transfers within a public customer's variable annuity without the customer's prior knowledge, consent, and authorization.

Acosta's suspension began August 18, 2003, and will conclude at the close of business November 17, 2003. (NASD Case #C10030061)

Joseph Ali (CRD #3063988, Associated Person, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ali consented to the described sanction and to the entry of findings that he forged the signatures of public customers on a Third Party Full Discretionary Authorization form that provided Ali with power of attorney and authorized him to exercise control over the funds in the customers' account at his member firm. The findings also stated that Ali wired \$23,000 from the account of public customers at his member firm to his personal bank account and converted the funds for his own use and benefit, without the customers' knowledge, authorization, or consent. NASD also found that Ali falsely testified about the conversion during an NASD on-the-record interview. (NASD Case #C10030057)

Frank Joseph Argenziano (CRD #1933781, Registered Principal, Massapequa, New York) submitted an Offer of Settlement in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Argenziano consented to the described sanctions and to the entry of findings that he engaged in the sale of an initial public offering (IPO) of common shares and warrants to public customers and misrepresented the structure of the IPO, and created an improper tie-in by instructing the firm's brokers to solicit the offering securities to public customers as a unit only when, in fact, the Registration Statement filed with the SEC provided that common shares and warrants could be purchased separately. The findings also stated that Argenziano engaged in unauthorized customer trades by causing purchases of the offering to be inputted upon the effective time of the offering without giving the brokers the required opportunity to first call all of the customers to firm up the IPO purchases. NASD also found that Argenziano caused the clearing firm to create and mail inaccurate transaction confirmations to public customers that failed to disclose the actual number of IPO shares and warrants purchased by the customers and reflected an unauthorized purchase of a unit IPO security. In addition, NASD found that Argenziano caused his firm to maintain inaccurate books and records by entering a "dummy" automatic data

processing security number for a non-existent unit security on confirmations, trade cancellation notices, client account statements, and proprietary account statements, and by recording the entry of sales and cancellations of such sales for nonpayment when no such legitimate sales had occurred.

Argenziano's suspension began August 18, 2003, and concluded at the close of business September 8, 2003. (NASD Case #CAF030009)

Samuel Shmuel Barmapov (CRD #4245309, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Barmapov consented to the described sanction and to the entry of findings that he recommended and sold to public customers shares of stock in two obscure, low-priced, highly speculative companies. The findings stated that, in recommending these stocks, Barmapov misrepresented the financial prospects of the companies and made baseless price predictions. In addition, NASD found that Barmapov failed to disclose the risks of investing in these speculative stocks and omitted material facts concerning the financial conditions of the companies. Further, the respondent's recommendations of these stocks were unsuitable for the customers. (NASD Case #CMS030157)

Val U. Barrutia (CRD #1020898, Registered Principal, Colorado Springs, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Barrutia consented to the described sanction and to the entry of findings that he received \$794,886 from public customers for the purpose of purchasing securities, but converted these funds for his own use and benefit without the customer's prior knowledge, authorization, or consent. (NASD Case #C3A030034)

Wendell Duane Belden (CRD #1324913, Registered Principal, Tulsa, Oklahoma) was fined \$40,000, required to pay \$55,567.03, plus interest, in restitution to the estate of a public customer, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam as a principal before functioning in any principal capacity. The SEC affirmed the sanctions following an appeal of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that Belden made unsuitable recommendations to a public customer by recommending Class B mutual fund shares instead of Class A shares in order to receive higher commissions.

Belden's suspension began August 18, 2003, and will conclude at the close of business August 17, 2004. (NASD Case #C05010012)

Rick Louis Bradley (CRD #4368588, Registered Representative, Dubuque, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bradley consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4 and failed to respond to NASD requests for information. (NASD Case #C04030039)

Barbara Lynch Brandenburg (CRD #28824, Registered Principal, Dallas, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Brandenburg caused checks totaling \$79,000 to be issued from the accounts of public customers held at her member firm, without the knowledge or consent of the firm or the account holders, endorsed each check with the names of the customers, and deposited the checks into an account under her control. The findings also stated that Brandenburg failed to respond to NASD requests for information. (NASD Case #C05030009)

Richard Edward Casner (CRD #2932269, Registered Representative, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Casner consented to the described sanction and to the entry of findings that he conducted unauthorized transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. The findings stated that after the customer complained to Casner that she had not authorized the transactions, he attempted to settle the complaint by depositing the amount of losses generated by the unauthorized transactions into the customer's account and did not disclose the customer's complaint or the fact that he had deposited funds into the customer's account to his member firm. NASD also found that Casner failed to respond to NASD requests for information. (NASD Case #C06030016)

Douglas Paul Cataldo (CRD #2467839, Registered Representative, Lynn, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cataldo consented to the described sanction and to the entry of findings that he converted a public customer's funds. (NASD Case #C11030024)

James Jay Christiano (CRD #2747068, Registered Principal, Jericho, New York) was fined \$50,000 and suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that Christiano failed to testify truthfully during an NASD on-the-record interview.

Christiano's suspension began July 21, 2003, and will conclude at the close of business July 20, 2005. (NASD Case C10990158)

Austin Charles Cogswell (CRD #600615, Registered Representative, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cogswell consented to the described sanction and to the entry of findings that he participated in numerous private securities transactions, for compensation, without providing his member firm prior written notice of his intent to participate in the transactions, without obtaining his firm's approval in writing, and without having the transactions supervised by his member firm and carried on its books and records. The findings also stated that Cogswell participated in outside business activities without providing his member firm prompt written notice of his activity. (NASD Case #C07030052)

John Francis Collopy, Jr. (CRD #51410, Registered Principal, Miami, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$6,000, jointly and severally, and suspended from association with any NASD member in a financial and operations principal capacity for five business days. Without admitting or denying the allegations, Collopy consented to the described sanctions and to the entry of findings that a member firm, acting through Collopy, conducted a securities business while failing to maintain the required net capital under Securities Exchange Act Rule 15c3-1.

Collopy's suspension began September 2, 2003, and concluded at the close of business September 8, 2003. (NASD Case #C07030051)

John Marvin Cook, II (CRD #1900910, Registered Representative, Miami Beach, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Cook failed to respond to an NASD request to appear for an on-the-record interview. (NASD Case #CMS030016)

John Michael Curran (CRD #1576877, Registered Principal, Dallas, Texas), Douglas Matthew Kent (CRD #2584392, Registered Principal, Arlington, Texas), and Mitchell Seth Rosenthal (CRD #1084558, Registered Principal, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which Curran was fined \$5,000 and suspended from association with any NASD member in any principal capacity for 30 business days. Kent was barred from association with any NASD member in any capacity and Rosenthal was fined \$7,500 and suspended from association with any NASD member in any principal capacity for 30 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Kent, who was responsible for conducting proprietary trading on behalf of his member firm, placed transactions that belonged in the firm's

proprietary trading account into the IRA account of Rosenthal in order to conceal trading losses in the proprietary account, resulting in trading losses of \$16,530 in Rosenthal's account. The findings stated that Kent conducted unauthorized transactions in his firm's error account and concealed his trading activity by, among other things, entering fictitious trades to offset the unauthorized trades and entering fictitious prices for executed transactions and canceling executed transactions. NASD also found that Rosenthal learned of Kent's activities, failed to take any remedial action against Kent, and failed to notify the firm's chief supervisory officer of Kent's activities. Furthermore, the findings stated that Rosenthal and Curran, on behalf of their member firm, failed to act in a manner reasonably calculated to prevent Kent from violating applicable securities laws, regulations, and NASD rules.

Curran's suspension began August 18, 2003, and will conclude at the close of business September 29, 2003. Rosenthal's suspension began August 18, 2003, and will conclude at the close of business September 29, 2003. (NASD Case #C06030014)

Luis Felipe Diaz, Jr. (CRD #2539595, Registered Representative, Setauket, New York) was fined \$30,000 and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid upon Diaz' reentry into the securities business. The sanctions were based on findings that Diaz made misrepresentations to public customers regarding risks associated with investments in variable annuity contracts.

Diaz' suspension began July 21, 2003, and will conclude October 18, 2003. (NASD Case #CLI030002)

Lawrence Richard Dugo (CRD #2555823, Registered Representative, Farmingdale, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dugo consented to the described sanction and to the entry of findings that he recommended and sold to public customers two obscure, low-priced, highly speculative securities. The findings stated that, in recommending the securities, Dugo misrepresented the financial prospects of the companies and made baseless price predictions, failed to disclose the risks of investing in these speculative stocks, and omitted material facts concerning the companies' financial conditions. In addition, NASD found that Dugo recommended stocks to public customers for whom the stocks were unsuitable. (NASD Case #CMS030174)

John Mann Ellsworth (CRD #1748107, Registered Principal, Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ellsworth consented to the described sanction and to the entry of findings that he converted \$196,000 from the account of a public customer for his own use and benefit

without the customer's prior knowledge, authorization, or consent. (NASD Case #C3A030031)

William Brian Fazio (CRD #4087019, Registered Principal, Milwaukee, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Fazio consented to the described sanctions and to the entry of findings that he recommended the purchase of securities to public customers of his member firm without reasonable grounds for believing that such investments were suitable in light of the customers' security holdings, financial situation, and needs.

Fazio's suspension began July 15, 2003, and concluded at the close of business July 28, 2003. (NASD Case #CMS030166)

Morty Paul Forney (CRD #1076472, Registered Principal, Billings, Montana) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Forney consented to the described sanction and to the entry of findings that he obtained checks from a public customer totaling \$149,295.25 intended for the purchase of securities. NASD found that, without the knowledge or consent of the customer, Forney deposited the funds in his personal bank account, thereby converting the customer's funds to his own use and benefit. (NASD Case #C3B030011)

Randall Joseph Frey (CRD #3212391, Registered Representative, North Royalton, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. In light of the financial status of Frey, the fine imposed was \$2,500. Without admitting or denying the allegations, Frey consented to the described sanctions and to the entry of findings that he exercised discretion to effect transactions in the accounts of a public customer pursuant to verbal authority without prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

Frey's suspension began August 18, 2003, and concluded at the close of business August 29, 2003. (NASD Case #C8B030015)

Herbert Amos Jones, Jr. (CRD #2614626, Registered Principal, Pittsburg, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Jones instructed a public customer to write a \$10,000 check made payable to him to be invested for the sole and exclusive benefit of the customer and, instead, without the customer's knowledge or consent, Jones negotiated the check

and used the funds for his personal benefit or for some purpose other than the benefit of the customer. NASD also found that Jones failed to respond to NASD requests for information. (NASD Case #C01030007)

David Christopher Kane (CRD #4514246, Registered Representative, New Baltimore, Michigan) submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Kane reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kane consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

Kane's suspension began August 18, 2003, and will conclude at the close of business February 17, 2004. (NASD Case #C8A030021)

John M. Klukewycz (CRD #2477332, Registered Representative, Forest Hills, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Klukewycz failed to respond to NASD requests for information. (NASD Case #CMS030050)

Maurice Thomas Larrea (CRD #3041830, Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Larrea consented to the described sanction and to the entry of findings that he provided to a public customer correspondence in the form of a letter signed by him containing the false and misleading representation that his member firm guaranteed a balance in the amount of \$410,000 in the customer's account. The findings also stated that Larrea failed and neglected to obtain approval of the correspondence from a principal at his member firm when he knew, or should have known, that approval of outgoing correspondence was required pursuant to the rules of NASD. (NASD Case #C05030037)

David Scott Leggett (CRD #1949697, Registered Principal, Louisville, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Leggett reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Leggett consented to the described sanctions and to the entry of findings that he received and accepted securities from public customers to be held in safekeeping. NASD found that Leggett failed to promptly deliver the public customers' securities to his member firm's main office for deposit into the customers' accounts. The finding also stated

that Leggett signed a Securities Pledge Agreement on behalf of his member firm between his customer and a third party, committing his member firm to certain commitments and undertakings. NASD also found that Leggett was not authorized to sign the Securities Pledge Agreement on behalf of his member firm.

Leggett's suspension began August 4, 2003, and will conclude at the close of business August 3, 2005. (NASD Case #C3A030029)

Matthew Nguyen Littauer (CRD #2027330, Registered Principal, Central Hong Kong, China) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Littauer consented to the described sanctions and to the entry of findings that he allowed a member firm to open new customer accounts using his representative number with the firm for public customers whose new accounts were solicited by persons not registered with the firm. The findings also stated that Littauer allowed the firm to use his representative number on transactions for public customers that were solicited by persons not registered with the firm and who provided the firm with instructions for the transactions. NASD also found that the firm did not have written authorization from the customer that was approved by a principal of the firm, authorizing the firm to accept the trade authorization from the unregistered person, and Littauer failed to speak with the customers about the transactions prior to their execution. Furthermore, NASD found that Littauer's actions of allowing the firm to use his registered representative number in this manner caused the firm to create and maintain inaccurate books and records reflecting that Littauer was the registered representative for the customers who solicited the new accounts and transactions.

Littauer's suspension began August 18, 2003, and will conclude at the close of business September 17, 2003. (NASD Case #CAF030037)

Martin Owen McCann, IV (CRD #2455442, Registered Principal, Fresno, California) submitted an Offer of Settlement in which he was fined \$38,841.21, including \$34,841.21 in compensation received by McCann, and suspended from association with any NASD member in any capacity for five months. The fine must be paid before McCann reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McCann consented to the described sanctions and to the entry of findings that he participated in outside business activity without providing prompt written notification to this member firm.

McCann's suspension began August 18, 2003, and will conclude January 17, 2004. (NASD Case #C01030002)

Alexys Ulando McKenzie (CRD #2642827, Registered Principal, Head of Harbour, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000, suspended from association with any NASD member in any capacity for two weeks, and ordered to pay \$78,575.53 in restitution to public customers. Without admitting or denying the allegations, McKenzie consented to the described sanctions and to the entry of findings that he charged excessive commissions and mark-downs on agency or principal transactions in highly liquid securities resulting in \$507,062.50 in commissions and mark-ups. The findings also stated that McKenzie failed to take into account the factors identified in NASD Conduct Rule IM-2440 in determining the fairness of commissions or mark-ups.

McKenzie's suspension began September 2, 2003, and will conclude at the close of business September 15, 2003. (NASD Case #CAF030040)

Kelli O'Brien Milz (CRD #2956890, Registered Principal, Marietta, Georgia) submitted an Offer of Settlement in which she was fined \$20,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Milz reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Milz consented to the described sanctions and to the entry of findings that she aided and abetted unregistered broker/dealer activity by opening new accounts at her member firm for individuals from new account forms provided by a non-registered day-trading firm with Milz as the registered representative on the forms. Once the new accounts had been opened, the customers were able to trade electronically using the software and trading platforms provided by the non-registered firm. The findings also stated that Milz paid, or caused to be paid, transaction-based compensation to the non-registered firm that then made transaction-based payments to other unregistered persons and entities. NASD also found that Milz created a customer account system that allowed an unregistered individual to track commissions due to the non-registered firm. In addition, NASD found that Milz assisted in the preparation of Web sites that promoted unregistered brokerage services.

Milz' suspension began August 18, 2003, and will conclude at the close of business August 17, 2005. (NASD Case #CAF020067)

Charlie J. Montero, Jr. (CRD #1789058, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 30 days. In light of the financial status of Montero, no monetary sanctions were imposed. Without admitting or denying the allegations, Montero consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Montero's suspension began August 18, 2003, and will conclude at the close of business September 16, 2003. (NASD Case #C10030055)

Joseph Michael Mucci (CRD #2566913, Registered Representative, Matawan, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, ordered to disgorge \$6,412.39 in commissions in partial restitution to a public customer, and suspended from association with any NASD member in any capacity for six months. The fine and restitution must be paid before Mucci reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mucci consented to the described sanctions and to the entry of findings that he exercised control over the account of a public customer and effected numerous and excessive securities transactions in this account, using unsuitable levels of margin in a manner that was inconsistent with the customer's investment objectives.

Mucci's suspension began September 2, 2003, and will conclude at the close of business March 1, 2004. (NASD Case #C9B030053)

Aqiyl Taariq Muhammed (CRD #2379364, Registered Representative, Marietta, Georgia) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 120 days. In light of the financial status of Muhammed, no monetary sanctions were imposed. Without admitting or denying the allegations, Muhammed consented to the described sanction and to the entry of findings that he opened an investment club at his member firm and solicited public customers to transfer \$258,263.05 from their existing securities accounts at his member firm to the investment club to be pooled for investment. The findings also stated that Muhammed entered into a "limited joint venture agreement" pursuant to which he obligated the club to invest \$350,000 without conducting any investigation to determine the potential risks of the joint venture prior to entering into the agreement and without having an adequate and reasonable basis for believing that the joint venture was suitable for investment prior to entering into the joint venture agreement. NASD also found that Muhammed entered into the agreement and failed to provide prior written notice to, and receive prior written approval from, his member firm to participate in the joint venture.

Muhammed's suspension began September 2, 2003, and will conclude at the close of business December 30, 2003. (NASD Case #C07030035)

Jeffrey Murray Nadel (CRD #1589564, Registered Representative, Norwalk, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, including disgorgement of \$1,900 of commissions, suspended from association with any NASD member in any capacity for six

months, and required to pay \$43,625, plus interest, in restitution to a public customer. The fine and restitution must be paid before Nadel reassociates with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Nadel consented to the described sanctions and to the entry of findings that he recommended that a public customer sell certain equity and mutual fund positions in the customer's account and purchase shares of a speculative security that resulted in the customer's account being highly concentrated in that security, thereby causing the account to suffer losses.

Nadel's suspension began September 2, 2003, and will conclude at the close of business March 1, 2004. (NASD Case #C11030027)

Peter Christopher Orthos (CRD #2079337, Registered Principal, Manhasset, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, jointly and severally, and suspended from association with any NASD member as a general securities principal for 15 months. Without admitting or denying the allegations, Orthos consented to the described sanctions and to the entry of findings that a member firm, acting through Orthos, failed to supervise adequately the activities of a former registered representative of the firm who engaged in excessive trading, unsuitable recommendations, and unauthorized transactions in the accounts of public customers.

Orthos' suspension began August 18, 2003, and will conclude at the close of business November 17, 2004. (NASD Case #C10030060)

Anthony A. Phillips (CRD #4501026, Associated Person, Sacramento, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Phillips consented to the described sanction and to the entry of findings that he failed to disclose a material fact on his Form U4. The findings also stated that Phillips failed to respond to NASD requests for information. (NASD Case #C01030017)

Robert William Phillips (CRD #2216889, Registered Principal, Spring Valley, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Phillips consented to the described sanction and to the entry of findings that he effected, or caused to be effected, transactions in the securities accounts of public customers and exercised discretionary power in those accounts without having obtained the customers' written authorization and/or prior written authorization from his member firm to treat the accounts as discretionary. The findings also stated that Phillips recommended and engaged in transactions in the securities accounts of public customers

without having reasonable grounds for believing that his recommendations and resultant transactions were suitable for the customers on the basis of their financial situations, investment objectives, and needs. (NASD Case #C02030045)

David Jullian Piusienski (CRD #4300924, Registered Representative, Cohoes, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Piusienski consented to the described sanction and to the entry of findings that he misappropriated insurance premiums totaling \$2,320 from public customers. (NASD Case #C11030025)

Patrick Albert Quigley (CRD #2567031, Registered Representative, Tucson, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Quigley consented to the described sanction and to the entry of findings that he converted \$4,991 received from a public customer for his own use and benefit without the customer's prior knowledge, authorization, or consent. NASD also found that Quigley settled a customer's complaint by signing a promissory note agreeing to pay the customer \$43,432.30 without informing his member firm. (NASD Case #C3A030030)

Eugene Francis Raia (CRD #1365986, Registered Principal, Montville, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Raia consented to the described sanction and to the entry of findings that he appeared before NASD staff for an on-the-record interview and refused to answer any questions. (NASD Case #C9B030047)

Kenneth Mitchell Robinson (CRD #2110219, Associated Person, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Robinson consented to the described sanction and to the entry of findings that he converted approximately \$2,200 in public customer funds to his own use without authorization. (NASD Case #C07030047)

Philip Lawrence Salice (CRD #2928448, Registered Representative, Bayshore, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Salice consented to the described sanction and to the entry of findings that he failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #CM5030169)

Ian Jon Scott (CRD #2962358, Registered Representative, Cedarburg, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for 31 days, suspended from association with any NASD member as a general securities principal for nine months, and required to requalify by exam as a general securities principal within six months. Without admitting or denying the allegations, Scott consented to the described sanctions and to the entry of findings that he failed to supervise reasonably the activities of employees of his member firm, and failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to achieve compliance with securities laws, regulations, and NASD rules. The findings also stated that Scott failed to reasonably supervise and establish and maintain an adequate supervisory system with regard to investment banking activities, including the public and private offer, sale, and distribution of securities; fair pricing of securities; communications with the public; customer suitability; and penny stock disclosure requirements.

Scott's suspensions began August 1, 2003, and the suspension in any capacity concluded August 31, 2003; the suspension as a general securities principal will conclude at the close of business April 30, 2004. (NASD Case #CMS030165)

Rory James Skifton (CRD #3080208, Registered Representative, La Crosse, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Skifton consented to the described sanction and to the entry of findings that he converted a money order belonging to a public customer to his personal use or for some purpose other than the customer's benefit. (NASD Case #C8A030060)

Gloster Knox Sonia (CRD #1802577, Registered Representative, New Orleans, Louisiana) was barred from association with any NASD member in any capacity. The sanction was based on findings that Sonia failed to respond to NASD requests for information. NASD also found that Sonia participated in private securities transactions without prior written notice to, and approval from, his member firm. (NASD Case #C05030007)

Edward Roosevelt Tiller (CRD #2608325, Registered Representative, Piscataway, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, ordered to pay \$7,500 in partial restitution to a customer, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Tiller consented to the described sanctions and to the entry of findings that he recommended that a customer invest his lump-sum distribution in a variable annuity but did not have reasonable grounds for believing that

the recommendation and resulting transaction were suitable for the customer on the basis of the customer's financial situation, investment objections, and needs.

Tiller's suspension began September 2, 2003, and will conclude at the close of business September 15, 2003. (NASD Case #C9B030052)

Dennis Lee Thompson, II (CRD #1429850, Registered Principal, Lafayette, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, including \$1,837.79 in disgorgement of commissions earned, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Thompson consented to the described sanctions and to the entry of findings that he recommended and effected the sale of deferred variable annuity contracts to a public customer without having a reasonable basis for believing that the recommendations and sales were suitable for the customer.

Thompson's suspension began September 15, 2003, and will conclude at the close of business September 26, 2003. (NASD Case #C05030039)

Arthur Andrew Toth, III (CRD #2518656, Registered Principal, Pittsburgh, Pennsylvania) was barred from association with any NASD member in any capacity and ordered to pay \$8,455, plus interest, in restitution to public customers. The sanctions were based on findings that Toth solicited and induced public customers to purchase warrants by means of high-pressure sales tactics, material omissions of fact and risk, and baseless and unreasonable price predictions. The findings also stated that Toth failed to disclose to public customers the material, negative information publicly available about the issuers of warrants and the securities. (NASD Case #CAF020023.

Mark Alan Uselton (CRD #2229571, Registered Principal, Edmond, Oklahoma) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any NASD member in the capacity of financial and operations principal for six months, and suspended from association with any NASD member in the capacity of general securities principal for three months. Without admitting or denying the allegations, Uselton consented to the described sanctions and to the entry of findings that, acting on behalf of his member firm, he engaged in a securities business when the firm's net capital was below the required minimum in contravention of SEC Rule 15c3-1. The findings also stated that Uselton, acting on behalf of his member firm, failed and neglected to provide notification that his member firm's net capital was below the required minimum pursuant to SEC Rule 15c3-1. In addition, the findings stated that Uselton, acting on behalf of his member firm, failed and neglected to file an accurate FOCUS Part IIA report and to timely file its annual

audited financial statement report within 60 days. NASD also found that Uselton failed to maintain copies of the firm's general ledger and month-end trial balances.

Uselton's suspensions began August 18, 2003, and his suspension as a general securities principal will conclude at the close of business November 17, 2003; his suspension as a financial and operations principal will conclude at the close of business February 17, 2004. (NASD Case #C05030035)

Anthony Vincent Vitale (CRD #2623131, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Vitale consented to the described sanctions and to the entry of findings that he failed, within 90 seconds after execution, to transmit through ACT last-sale reports of block transactions in an Over-the-Counter (OTC) Equity security. The findings stated that, in connection with the block transactions, Vitale's member firm acted in a principal capacity and he intentionally delayed reporting the block transactions so that he, on behalf of member firm, could effect trades in securities that offset, in whole or in part, the position his member firm held as a result of the respective block transactions. NASD determined that by so delaying the trade reports, Vitale minimized the risk his member firm faced in connection with the block transactions.

Vitale's suspension began August 4, 2003, and concluded at the close of business August 29, 2003. (NASD Case #CMS030178)

Gabe P. Weinert (CRD #4620877, Registered Representative, Grosse Pointe, Michigan) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, suspended from association with any NASD member in any capacity for six months, and required to re-qualify by exam before associating with any NASD member firm in any capacity. The fine must be paid before Weinert reassociates with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Weinert consented to the described sanctions and to the entry of findings that, prior to taking the Series 7 exam, he signed a document that prohibited him from leaving the testing center and from removing any materials from the testing center, and that advised him that any violation of such rules was subject to possible disciplinary action. The findings stated that during the exam, Weinert left the testing center on two occasions and took at least one piece of scratch paper with him.

Weinert's suspension began August 18, 2003, and will conclude at the close of business on February 17, 2004. (NASD Case #C8A030058)

Frank Lenord Wilson, Jr. (CRD #4160225, Registered Representative, Delafield, Wisconsin) was barred from association with any NASD member in any capacity. The sanction was based on findings that Wilson took blank checks from the checkbook of a registered representative of his member firm. The findings also stated that Wilson made the checks, totaling \$4,000, payable to himself, forged the registered representative's signature on the checks, endorsed the checks, and used the funds for his own benefit or for the benefit of someone other than the registered representative. NASD also found that Wilson attempted to misappropriate an additional \$1,855.45 from the registered representative, which was stopped when the representative discovered that the check was missing. In addition, the findings stated that Wilson failed to respond to NASD requests for information. **(NASD Case #C8A030010)**

Individuals Fined

Christopher Joseph Cox (CRD #2723225, Registered Principal, Baldwin, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$10,000. Without admitting or denying the allegations, Cox consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce special procedures for supervising the telemarketing activities of all of his member firm's registered representatives as required by NASD's Taping Rule. The findings also stated that Cox allowed the registered representatives in the firm's main office and branch offices to have control over the firm's taping system, therefore failing to ensure the tape recording of all telephone conversations between the firm's registered persons and existing and potential public customers. NASD also found that the firm was only taping conversations of three registered representatives and not the remaining six registered representatives. In addition, NASD found that Cox failed to ensure that all tape recordings were retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place, and failed to catalogue all of the retained tapes by registered person and date. **(NASD Case #C10030064)**

Vladimir Eydelman (CRD #2697580, Registered Representative, Long Beach, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$10,000, and ordered to pay \$23,845.65 in restitution to public customers. Without admitting or denying the allegations, Eydelman consented to the described sanctions and to the entry of findings that he charged excessive commissions and mark-downs on agency or principal transactions in highly liquid securities that resulted in \$102,500 in commissions and mark-downs. The findings also stated that Eydelman failed to take into account the factors identified in NASD Conduct Rule IM-2440 in determining the fairness of mark-ups and mark-downs when establishing the amount of the commission or mark-down. **(NASD Case #CAF030041)**

Decisions Issued

The following decisions have been issued by the DBCC or the Office or Hearing Officers and have been appealed to or called for review by the NAC as of August 1, 2003. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

Brookes McIntosh Bendetsen (CRD #1374304, Registered Principal, Burlingame, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Bendetsen signed the name of a public customer to a margin agreement for the customer's trust account. The findings also stated that Bendetsen recommended to a public customer and effected in the customer's account short sales and purchases of shares of stock and the writing of a series of purchases and sales of option contracts, without having a reasonable basis for believing that the transactions were suitable for the customer based on the facts disclosed by the customer as to other security holdings, financial situation, and needs. NASD also found that Bendetsen created and provided to a public customer false account statements relating to the customer's account at his member firm.

Bendetsen has appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C01020025)**

Andrew Christopher Knight (CRD #3011465, Registered Representative, Port Chester, New York) was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 business days. The sanctions were based on findings that Knight willfully failed to disclose material information on his Form U4.

This decision has been called for review by the NAC, and the sanctions are not in effect pending consideration of the review. **(NASD Case #C10020060)**

Ronney Arun Sahai (CRD #1551326, Registered Principal, Ridgewood, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Sahai forged, or caused to be forged, the signatures of public customers on documents pertaining to investments. The findings also stated that Sahai engaged in unauthorized transactions on behalf of a public customer. In addition, Sahai failed to respond to NASD requests for information.

Sahai has appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the review. **(NASD Case #C9B020032)**

Complaints Filed

The following complaints were issued by NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Raymond Blake Gibson (CRD #3035781, Registered Representative, Raleigh, North Carolina) was named as a respondent in an NASD complaint alleging that he received in excess of \$34,000 from insurance policyholders for premium payments and converted the funds to his own use without authorization. The complaint also alleges that Gibson failed to respond to NASD requests for information. (NASD Case #C07030049)

Mia H. Gilchrist (CRD #2894991, Registered Representative, Mount Laurel, New Jersey) was named as a respondent in an NASD complaint alleging that she submitted to her member firm the purported request of a public customer to change the address of record for the account of the customer, without the customer's authorization. The complaint also alleges that Gilchrist, without the authorization or knowledge of a public customer, caused money market funds in the account of the customer to be liquidated and a check in the amount of \$3,232.04 to be issued and sent to the new address of record for the account. In addition, the complaint alleges that Gilchrist falsified, or caused to be falsified, the purported endorsement of the customer on the check, and caused it to be deposited to the securities account of another customer. The complaint further alleges that Gilchrist failed to respond to NASD requests for information. (NASD Case #C9A030026)

Stratos Hatzikontos (CRD #2599724, Registered Representative, Fresh Meadows, New York) was named as a respondent in an NASD complaint alleging that he recommended public customers invest in a company represented as a bona fide company when, in fact, it was fictitious, and received \$40,000 from the customers for the investment. The complaint also alleges that Hatzikontos misappropriated the funds for his own use and benefit. In addition, the complaint alleges that Hatzikontos prepared, or caused to be prepared, and issued false and fictitious account statements to the public customers that purported to represent the performance of their investment in the fictitious company. Furthermore, the complaint alleges that Hatzikontos failed to respond to NASD requests for information and documentation. (NASD Case #C10030065)

James Paul Hood (CRD #4467331, Registered Representative, Forth Worth, Texas) was named as a respondent in an NASD complaint alleging that he assisted a public customer in opening a new bank account at the parent

company of his member firm and, without the customer's knowledge or consent, issued ATM cards on the customer's account and began making unauthorized withdrawals on the same day the account was opened. The complaint also alleges that Hood authorized automatic bank drafts by several of his creditors to pay his personal expenses and bills. Furthermore, the complaint alleges that Hood caused \$19,380.91 to be withdrawn from the customer's account without the customer's authorization, knowledge, or consent. In addition, the complaint alleges that Hood failed to respond to NASD requests for information. (NASD Case #C06030017)

Kirlin Securities, Inc. (CRD #21210, Syosset, New York), Paul Thomas Garvey (CRD #1214388, Registered Representative, Orinda, California), and Brian Francis McEnery (CRD #2735200, Registered Representative, San Francisco, California) were named as respondents in an NASD complaint alleging that they charged excessive commissions or mark-downs on principal or agency transactions in highly liquid securities. The complaint also alleges that the firm's registered representatives, including Garvey and McEnery, determined the amount to be charged on each of the transactions and knew, or should have known, the relevant factors enumerated in NASD Conduct Rule IM-2440 and should have considered them in determining the fairness of the charges. In addition, the complaint alleges that the charges on the transactions were excessive in light of the type of securities involved, the availability of the securities in the market, the price of the securities, the amount of money involved in the transactions, disclosures to the customer, the pattern of charges, and the nature of the firm's business. Moreover, the complaint alleges that the firm failed to maintain and enforce a supervisory system reasonably designed to achieve compliance with NASD rules relating to charges to customers. Furthermore, the complaint alleges that the firm's written procedures did not include the factors enumerated in Conduct Rule IM-2440, and, one year later, the written procedures reflected the enumerated factors but failed to explain how the factors should be taken into account. (NASD Case #CAF030039)

Legend Merchant Group, Inc., f/k/a IAR Securities Corp. (CRD #5155, New York, New York) and Edward Andrew Sita (CRD #1509735, Registered Principal, Staten Island, New York) were named as respondents in an NASD complaint alleging that the firm, acting through Sita, in connection with an inducement or an attempt to induce the purchase or sale of a security or with the offer, sale, and purchase of a security, and through means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly employed a device, scheme, contrivance, and artifice to defraud and manipulative, deceptive, or other fraudulent device or contrivance; omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices, or courses of business that operate as a fraud or deceit upon investors, or prospective investors, of a private placement. The complaint also

alleges that the firm, acting through Sita, made a material misrepresentation in a private placement memorandum (PPM) that stated that the firm had no material restriction and/or limitations on its ability to participate in private placements when, in fact, NASD did not permit the firm to participate in private placement offerings until a later date when NASD approved the firm's request for a modification of its membership agreement. In addition, the complaint alleges that the firm, acting through Sita, failed to disclose material facts in the PPM or in the PPM Supplement and knew, or should have known, that omissions in the PPM and the PPM Supplement were material. Furthermore, the complaint alleges that the firm, acting through Sita, participated in a private offering even though the firm's membership agreement did not permit the firm to engage in such activities. **(NASD Case #C10030058)**

Chris Michael Manettas (CRD #2274927, Registered Representative, East Quogue, New York) was named as a respondent in an NASD complaint alleging that he effected, or caused to be effected, transactions in the accounts of public customers that were excessive in frequency in view of the customers' financial circumstances and investment needs. The complaint also alleges that Manettas engaged in this trading activity without reasonable grounds for believing that the level of activity was suitable for the customers based upon the customers' financial situation and investment needs. In addition, the complaint alleges that Manettas purchased large numbers of shares of speculative technology securities on margin in the accounts of public customers that were incompatible with the customers' financial situation. Moreover, the complaint alleges that Manettas effected, or caused to be effected, sales in the accounts of public customers without their knowledge, authorization, or consent. Furthermore, the complaint alleges that Manettas exercised discretion in the accounts of public customers without the prior written authorization of the customers or the prior written acceptance of the account as discretionary by his member firm. **(NASD Case #C10030059)**

Matityahu Meshizahav (CRD #2834481, Registered Representative, Brooklyn, New York) was named as a respondent in an NASD complaint alleging that he withdrew \$20,500 from the account of a public customer and converted the funds to his own use and benefit without the customer's authorization. The complaint also alleges that Meshizahav failed to respond to NASD requests for a written statement, documentation, and information. **(NASD Case #C10030063)**

Michael Bernard O'Hare (CRD #2522972, Registered Representative, Bridgewater, New Jersey) was named as a respondent in an NASD complaint alleging that he recommended and effected purchase and sale transactions in the account of a public customer without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size, frequency, and concentration of the speculative securities; the nature of the recommended transactions; and the customer's financial situation, investment objectives, circumstances, and needs. **(NASD Case #C9B030045)**

Firm Expelled for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320

National Capital, LLC
Oklahoma City, Oklahoma
(July 21, 2003)

Firm Expelled for Failure to File Annual Audit Reports Pursuant to NASD Rule 9544

Werbel-Roth Securities, Inc.
Boca Raton, Florida
(July 15, 2003)

Firm Suspended for Failure to Supply Financial Information

The following firm was suspended from membership in NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 8221. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Fuerst Securities
Corporation
Grand Junction, Colorado
(June 23, 2003)

Suspension Lifted

NASD has lifted the suspension from membership on the date shown for the following firm because it has complied with formal written requests to submit financial information.

Oakdale Financial
Group LLC
New York, New York
(June 24, 2003)

Individuals Barred Pursuant to NASD Rule 9544 for Failure to Provide Information Requested Under NASD Rule 8210.

(The date the bar became effective is listed after the entry.)

Fearn, Kevin M.
Delaware, Ohio
(July 30, 2003)

Marsh, Jr., Willie T.
Buffalo, New York
(July 14, 2003)

Shain, Russell
Brooklyn, New York
(July 28, 2003)

Yen, Don Joe
Dallas, Texas
(July 29, 2003)

Young, Ernest
Chicago, Illinois
(July 16, 2003)

Individuals Suspended Pursuant to NASD Rule 9541(b) for Failure to Provide Information Requested Under NASD Rule 8210.

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Berkman, Jay
Weston, Connecticut
(July 14, 2003)

Coulter, Conrad L.
Newport Beach, California
(July 10, 2003)

Daly, Paul M.
Highland Beach, Florida
(July 29, 2003)

Emslie, Patrick
Tucson, Arizona
(July 23, 2003)

Fischer, Francois
Valley Stream, New York
(July 25, 2003)

Hafen, Roy
Las Vegas, Nevada
(June 12, 2003)

Reardon, Michael D.
Jasper, Georgia
(July 14, 2003)

Smith, Jr., James L.
Jackson, Tennessee
(July 23, 2003)

Sullivan, Frank
Patchogue, New York
(July 2, 2003)

Szilagyi, Melissa M.
Brookfield, Illinois
(July 1, 2003)

Individual Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply With an Arbitration Award or a Settlement Agreement

Garceran, Carlos Antonio
Mendham, New Jersey
(June 27, 2003)

Individuals Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320

Avery, Leroy
West Allis, Wisconsin
(July 21, 2003)

Bialecki, Jay A.
Sunbury, Ohio
(July 21, 2003)

Donnerstag, Harold P.
Matawan, New Jersey
(July 9, 2003)

Gallagher, William J.
Glendale, California
(July 21, 2003)

Kao, Coleman
Pasadena, California
(July 21, 2003)

Perez, Raul D.
Hollywood, Florida
(July 21, 2003)

Richardson, Jeffrey A.
Columbus, Ohio
(July 21, 2003)

Stein, Jack H.
W. Palm Beach, Florida
(July 21, 2003)

Worrell, Kevin D.
Queens Village, New York
(July 9, 2003)

NASD Files Enforcement Actions Involving Unsuitable Sales of Mutual Funds

NASD has announced five new enforcement actions as part of its ongoing focus on the sale of Class B mutual fund shares. Four of these cases are settlements in which the individuals agreed to suspensions from the securities industry for up to nine months, and fines totaling almost \$120,000. The fifth action is a complaint where the broker is contesting the charges.

In each of the settled cases, the brokers violated NASD's suitability rule by recommending their customers purchase of B share mutual funds instead of A shares. The purchase of A shares would have eliminated or reduced front-end sales charges through breakpoint discounts available at various dollar amounts; resulted lower ongoing expenses than those available through B shares; and would have avoided the contingent deferred sales charges associated with B shares. The differences between A and B share mutual funds are explained more fully in an Investor Alert recently published by NASD: Investor Alert - Class B Mutual Fund Shares: Do They Make the Grade?

"In recommending mutual funds with different classes to investors, the broker must put his customer first. It is critical that a broker consider the costs of A shares versus B shares for the customer, and not the profit for the broker," said Mary L. Schapiro, NASD Vice Chairman and President of Regulatory Policy and Oversight. "NASD will continue to bring sales practice cases such as these when investors are sold mutual fund products that are unsuitable."

The cases announced today are:

- ♦ **Qimat R. Goyal, associated with Marsco Investment Corp., of Roseland, NJ,** was fined \$48,346 and suspended for nine months for unsuitable mutual fund B share recommendations to five customers. Goyal's suspension began August 18, 2003, and will conclude at the close of business May 17, 2004. (NASD Case #C9B030046)
- ♦ **Keith Korch, associated with Tucker Anthony, Inc.'s Sturbridge, MA office,** was fined \$60,000 and suspended for 30 days for recommending the purchase of \$3.5 million of mutual fund B shares to a customer. Given the dollar amount invested, the investor would have been able to purchase the A shares without any up-front sales charge. Korch's suspension began July 21, 2003, and concluded at the close of business August 19, 2003. (NASD Case #C11030022)

- ♦ **James Wheeler and James Wheeler & Co., Inc., of Denver, CO:** a fine of \$8,600 to be paid by the firm, a suspension of Wheeler for 10 business days and various remedial undertakings, including a requirement that before recommending B shares in the future the firm prepare and give to the customer an analysis of the relative costs of the two classes. The respondents recommended unsuitable purchases of B shares in 20 funds from 15 fund families to a customer who should have purchased A shares. Wheeler's suspension began August 18, 2003, and concluded at the close of business August 29, 2003. (NASD Case #C3A030033)
- ♦ **Robert Barmen, associated with UBS Financial Services, Inc.'s Pittsburgh, PA office,** was fined \$2,500 and suspended for 10 business days for unsuitable mutual fund B share recommendations to a customer. Barmen's suspension began September 2, 2003, and will conclude at the close of business September 15, 2003. (NASD Case #C9A030025)
- ♦ **Paul Pallo, a registered representative with Staten Securities of Staten Island, NY,** was charged in a complaint with selling mutual fund B shares to two customers when Class A shares would have been more suitable. (NASD Case #C9B030051)

Under NASD rules, an individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, order to pay restitution, censure, suspension, or bar from the securities industry.

NASD Charges Louisiana Broker With Unsuitable Sales of Variable Annuities and Mutual Funds of More Than \$6 Million

NASD has charged John Steven Blount of Lake Charles, LA, with unsuitable sales of variable annuities and mutual funds to 11 customers totaling over \$6 million. These unsuitable sales generated almost \$220,000 in commissions. Blount's conduct involved a scheme to defraud investors and to frustrate attempts by his employer to supervise his activities. The transactions took place between 1998 and 2001, while Blount was a registered representative of NY Life Securities, Inc.

Blount's customers were older, conservative investors who were generally seeking current income from their investments. NASD's complaint charges that Blount's investment recommendations exposed his customers to excessive market risk, lacked sufficient liquidity, and failed to address the customers' needs for current income.

In one instance, the customer was a 62-year-old retiree who wished to keep his principal investment safe, and had told Blount that he anticipated the need within a few months for \$50,000 to buy a car and to make home repairs. Despite the customer's near-term need for liquidity, Blount recommended that the customer invest almost all of his liquid assets in a variable annuity contract that imposed surrender charges for early withdrawals during the first six years of the contract. Furthermore, Blount recommended allocating the investment to high-risk sub-accounts that were not consistent with the customer's desire to keep his principal safe. In order to buy a car and make home repairs, the customer was forced to draw on his home equity and subsequently had to take early withdrawals from his variable annuity to make the resulting loan payments.

The complaint also charges that Blount misrepresented material features of the variable annuities in order to induce customers to purchase the products. Additionally, in an effort to circumvent his firm's review of annuity and mutual fund transactions, Blount directed his sales assistant to falsify firm records regarding customers' financial situations and investment objectives.

"Our continuing examination focus on variable annuity sales and today's enforcement action should leave no doubt about our continuing serious concerns over how these products are sold," said Mary L. Schapiro, NASD Vice Chairman and President of Regulatory Policy and Oversight. "Brokers selling these complex products must be especially mindful of investors' risk tolerance and liquidity needs when recommending them as investments."

This case was brought in connection with an ongoing series of NASD special examinations and investigations that have focused on the sale of variable annuity products, and have resulted in over 75 annuity-related disciplinary actions taken by NASD since the beginning of 2001. As part of its overall focus on the sales of variable annuity contracts, NASD has issued educational alerts to both investors and firms to help ensure that these products are properly sold, which can be found at:

www.nasdr.com/alert_exchange_lifeinsurance.htm

www.nasdr.com/pdf-text/9935ntm.pdf and,

www.nasdr.com/pdf-text/0044ntm.pdf.

Under NASD rules, an individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, order to pay restitution, censure, suspension, or bar from the securities industry.